IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

LINDA JARVIS, PLAINTIFF,

VERSUS CIVIL ACTION NO. 3:94CV123-S-A

WAL-MART STORES, INC., DEFENDANT.

MEMORANDUM OPINION GRANTING
IN PART DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This cause of action is before the court on the motion of the defendant for summary judgment. The case is controlled by the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001, et seq. The case was earlier remanded to the plan administrator for further consideration. The defendant argues that the decision to deny payment of certain medical expenses incurred by the plaintiff was not arbitrary. The plaintiff asserts that the defendant improperly denied coverage for the medical expenses even though her physicians stated that the treatment was not for a pre-existing condition.

The defendant states in its memorandum that the purpose of the motion for summary judgment is to determine: first, the standard of review, second, whether the plaintiff is entitled to a jury trial, and third, whether punitive damages are recoverable in an ERISA case. These are strictly legal question which are well settled under ERISA. The defendant also attaches material which is only pertinent to the factual issue of the pre-existing issue. The plaintiff refuses to acknowledge the settled legal issues, and argues that there is a genuine issue of fact

regarding the pre-existing condition.

SUMMARY JUDGMENT STANDARD

On a motion for summary judgment, the court must ascertain whether there is a genuine issue of material fact. Fed. R. Civ. P. 56(c). This requires the court to evaluate "whether there is the need for a trial--whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." Anderson v. Liberty Lobby, Inc. 477 U.S. 242, 250 (1986). The United States Supreme Court has stated that "this standard mirrors the standard for a directed verdict...which is that the trial judge must direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict. If reasonable minds could differ as to the import of the evidence, however, a verdict should not be directed." Anderson, 477 U.S. at 250-51 (citation omitted). Further, the Court has noted that the "genuine issue" summary judgment standard is very similar to the "reasonable jury" directed verdict standard, the primary difference between the two being procedural, not substantive. Id. at 251. "In essence...the inquiry under each is the same: whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Id. at 251-52. "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury

could reasonably find for the plaintiff. The judge's inquiry, therefore, unavoidably asks whether reasonable jurors could find by a preponderance of the evidence that the plaintiff is entitled to a verdict - `whether there is [evidence] upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the onus of proof is imposed.'" Id. at 252 (citation omitted). However, "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." Id. at 255.

Facts

The plaintiff was employed in the pharmacy department in the New Albany, Mississippi, Wal-Mart from December 28, 1992, until January 1994. The plaintiff became an eligible participant under the subject employee medical benefit plan as of December 28, 1992. She incurred approximately $10,500.00 in medical expenses in January and February of 1993. On February 25, 1993, Dr. David Williams performed a hysterectomy on the plaintiff due to excessive and prolonged vaginal bleeding. Prior to becoming eligible under the employee benefit plan, the plaintiff was treated by Dr. Sam Creekmore and Dr. David Williams. After the initial denial of coverage, both Dr. Sam Creekmore and Dr. Williams provided the defendant with medical statements which

concluded that the surgery and treatment were not associated with a pre-existing condition. In October of 1993, the defendant's advisory physician reviewed the plaintiff's treating physicians' medical records. On or about December 13, 1993, the plaintiff was notified that her claim had been denied by the administrative committee as pre-existing. The plaintiff pursued her administrative remedies upon being advised of the claim denial and exhausted her administrative remedies prior to filing this legal action. Upon agreement of the parties, the case was remanded to the plan administrator for further consideration. The plaintiff's medical expenses were again denied due to being related to a pre-existing condition.

Standard of Review

ERISA provides that "a fiduciary shall discharge his duties with respect to a plan solely in the interests of the participants and beneficiaries and ... in accordance with the documents and instruments governing the plan." 29 U.S.C. §1104 (a)(1)(D). Fifth Circuit case law has held that courts are to give plan administrators wide discretionary powers in making factual determinations. See Pierre v. Conn. Gen. Life Ins. Co., 932 F.2d 1552, 1559 (5th Cir. 1991) (court gives deference to factual determination made by administrator, unless an abuse of discretion); Wildbur v. Arco Chemical Co., 974 F.2d 631, 642 (5th Cir. 1992) (court should evaluate fact determinations under abuse of discretion whether or not plan grants discretion to administrator); Southern Farm Bureau Life Ins. Co. v. Moore, 993

F.2d 98, 101 (5th Cir. 1993) (due deference to administrator's factual conclusions that reflect a reasonable and impartial judgment). A decision to deny benefits under a plan covered by ERISA will be overturned when (1) arbitrary and capricious, (2) not supported by substantial evidence, or (3) error on a question of law. See Bayles v. Central States, Southeast and Southwest Areas Pension Fund, 602 F.2d 97, 99-100 (5th Cir. 1979).

When the plaintiff has been given an opportunity to submit proof in support of her claim, the court is bound by the administrative record. See Wildbur, 974 F.2d at 639 (emphasis added); Moore, 993 F.2d at 102 ("...we may consider only the evidence that was available to the plan administrator in evaluating whether he abused his discretion in making the factual determination...."). From a stipulation in the pretrial order, it appears that the plaintiff completed her administrative remedies. But the plaintiff argues that she was not given a full and fair review since the plan administrator ignored her doctors' statements that her surgery was not related to a pre-existing condition, but instead, after several months, directed the plan physician to review the plaintiff's medical record. This was the reason for the remand. This evidence may be pertinent to whether the plan administrator was arbitrary in deciding that the medical costs were associated with a pre-existing condition. The defendant argues that the court should settle the issue now, since all of the administrative record is before the court. Under the circumstances, the court prefers to hear the evidence

at trial.

The plaintiff is seeking coverage for certain medical expenses which she alleges should have been paid by her employee insurance. Such relief is strictly equitable. See Moffitt v. Blue Cross & Blue Shield, 722 F. Supp. 1391, 1395 (N.D. Miss. 1989). There is not a right to trial by jury under ERISA when the relief sought is essentially equitable in nature. See Calamia v. Spivey, 632 F.2d 1235, 1237 (5th Cir.1980). The plaintiff's demand for a jury should be stricken. The plaintiff requested punitive damages in her complaint, but has acquiesced that they are not available under ERISA. See Massachusetts Mutual Life Insurance Co. v. Russell, 473 U.S. 134 (1985); Medina v. Anthem Life Insurance Company, 983 F.2d 29, 30 (5th Cir. 1993).

An ORDER shall be issued contemporaneously with this memorandum opinion.

This the _____ day of July, 1996.

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CHIEF JUDGE